ROSITA TRUJILLO

IBLA 81-335, 81-455 Decided December 18, 1981

Appeal from decisions of the Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offers. IBLA 81-335: I-10419 through I-10426, I-10463, I-10468, I-10470 through I-10473, I-10475, I-10480, I-10483 through I-10485, I-10503, I-10529, I-10530. IBLA 81-455: I-10416.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

   An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant; R. Dennis Ickes, Esq., Salt Lake City, Utah, for respondent, Emery Energy, Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Rosita Trujillo has appealed from decisions dated January 7, 1981, of the Idaho State Office, Bureau of Land Management (BLM), rejecting the above-listed over-the-counter oil and gas lease offers for failure to disclose a party in interest at the time of filing, as required by 43 CFR Subpart 3102.

The offers were prepared and filed for appellant by Bill Stevensen on February 2, 1976. The offers and accompanying certificates indicated that appellant was the sole party in interest. On June 20, 1980, appellant filed with BLM an "Amended Certification of Qualifications to Hold A Federal Oil And Gas Lease." Attached to the certification was the following statement:

> At the time of filing the subject offer, I had agreed to pay Bill Stevensen, who prepared the offers, day work and expenses or, if the acreage was sold, a fee of 25 cent per acre for each acre that issued. It was my intent that, if I was unable to sell the acreage immediately, I would offer an interest to another party or parties in return for a proportionate share of the expense or I could withdraw my offer. I had complete control of the offer until February 3, 1976 when I signed an agreement with Odessa Natural Corporation for transfer of the subject Lease to Odessa under certain terms and conditions. [1/]

On October 23, 1980, Emery Energy, Inc., filed a protest, contending that appellant was not the sole party in interest at the time her offers were filed.

On December 31, 1980, BLM issued a decision finding Bill Stevensen a party in interest and giving appellant's offers priority as of June 20, 1980, the date appellant filed the above statement.

BLM's January 1981 decision, appealed herein, which vacated the December 1980 decision, states in pertinent part as follows:

> Decision (copy enclosed) dated December 31, 1980, from this office established priority of the above-listed oil and gas lease offers as June 20, 1980, the date Rosita Trujillo disclosed that Bill Stevensen would receive an interest in the leases when sold.
>
> Regulations in 43 CFR Subpart 3102 require that a statement must be furnished, signed by both the offeror and any other party in interest, setting forth the nature of the agreement between them if oral, and a copy of such agreement if written. Such statement or agreement must be accompanied by a statement signed by the other party in interest, setting forth his citizenship and compliance with acreage limitations.

1/ As the name "Stevensen" is spelled that way in the "Attachment to Certification" filed by appellant, we spell Stevensen the same way throughout this decision.

Since Bill Stevensen is a party in interest in the offers and the necessary statements have not been submitted, the offers are afforded no priority and are hereby rejected. The above-mentioned December 31, 1980, decision from this office is vacated.

Appellant states on appeal that no written agreement existed between herself and Stevensen. Appellant explains that she submitted his disclosure statement in response to a new "Certificate of Qualifications To Hold a Federal Oil And Gas Lease," furnished her by BLM in May 1980.

Appellant contends that Stevensen merely provided a prefiling service for her and had no interest in any lease which would issue. Appellant argues that no disclosure was required under 43 CFR 3102.7, 2/ the regulation in effect at the time the offers were filed. Appellant

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2/ The Department amended certain regulations governing oil and gas leasing effective June 16, 1980. See 45 FR 35156 (May 23, 1980). The text of 43 CFR 3102.7 provided:

"§ 3102.7 Showing as to sole party in interest.

"A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled." The amended regulation as to sole party in interest, 3102.2-7 now provides:

"§ 3102.2-7 Sole party in interest.

"(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

"(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement

contends that neither the regulations nor prior Board decisions require disclosure of prefiling assistance, or of the compensation received for such assistance.

[1] The Departmental regulation on "sole party in interest," 43 CFR 3102.7, provided that a separate statement signed by "other interested parties" and by the offeror, "setting forth the nature and extent of the interest of each in the offer," and a copy of their written agreement must be filed "not later than 15 days after the filing of the lease offer." Failure to comply results in rejection of the lease offer or cancellation of any lease issued pursuant to the offer. Warren R. Haas, 57 IBLA 247 (1981); Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981), appeals pending, Pagedas v. Watt, No. C 81-226 (D. Wyo. filed July 23, 1981), and Geosearch, Inc. v. Watt, No. C 81-0208 (D. Wyo. filed Aug. 7, 1981).

The question for decision is whether Stevensen had an interest in appellant's offers and leases to be issued such as to require appellant to comply with the disclosure requirements of 43 CFR 3102.7. An "interest" in a lease is:

> Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed.

43 CFR 3100.0-5(b).

In view of appellant's statement describing her agreement with Stevensen, her arguments that Stevensen merely provided a compensated prefiling service are not persuasive. Although Stevensen's entitlement to share in the proceeds of any lease issued was contingent on appellant's selling it, or part thereof, it was nevertheless an "interest" as that term is defined in 43 CFR 3100.0-5(b), as the interest gave Stevensen a claim to share in profits which may be derived from a lease. D. R. Weedon, Jr., 51 IBLA 378 (1980), aff'd, D. R. Weedon, Jr. v. Watt, Civ. No. 81-749 (D.D.C. Oct. 9, 1981).

Appellant concedes that the agreement existed when her offers were filed. Consequently, Stevensen had an enforceable right to share

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fn. 2 (continued)
shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title [45 FR 35162 (May 23, 1980)]."

in the proceeds of any acreage sold. The failure to disclose this interest at the time of filing establishes a violation of 43 CFR 3102.7, and there is no merit to the argument that the filings conformed to that regulation. While the phraseology of that regulation was changed in the 1980 amendments, the substantive requirements remain the same.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

CHIEF ADMINISTRATIVE JUDGE PARRETTE CONCURRING:

Although I do not disagree with the majority in either rationale or result, appellant has made an argument on appeal that I think deserves further comment.

According to appellant, the issue in this case is "whether an individual who offers prefiling services in checking available Federal lands and preparation of lease applications and is to be compensated in cash for his services constitutes a 'party in interest' in the application which must be disclosed under the regulations."

Having posited that issue as decisive, appellant points out that BLM's regulations prior to April 1964 and subsequent to June 1980 required disclosure of prefiling assistance, but that at the time of this application they did not. Thus, appellant was simply conditioning the amount of her payment for Stevenson's prefiling services upon the accuracy of his checking on the availability of open lands. She did not intend to create in him an interest in the lease.

In support, appellant cites the Geosearch cases (40 IBLA 267, 40 IBLA 401, 39 IBLA 49, etc.), in which, although the filing service gave prefiling assistance and advanced funds for leases on behalf of clients, a discloseable interest in the lease was not found. Appellant argues that neither the regulations nor any Board decisions require disclosure of prefiling assistance simply because the right to such compensation is limited by the accuracy of the prefiling assistance, by the right of the offeror to withdraw the offers, or by an agreement as to time of payment.

Unfortunately, appellant may be correct in this conclusion, but we cannot agree with her premise. The sole party in interest regulation, 43 CFR 3102.7 (1979), has long required disclosure of any "prospective or future claim to an advantage or benefit from a lease" and of any participation or defined or undefined share in any profits derived from the lease, based upon any agreement or understanding existing at the time the offer is filed. What saved the filing service's clients in the Geosearch cases, but doomed them in the Weedon type of case (cited by the majority), was not the nature of the assistance that took place before the offer was filed but whether any sharing would take place afterwards. In Weedon, the offeror was committed to pay a percentage of the proceeds of any sale of the lease to the filing service, which was authorized to act as his sole and exclusive agent in the sale. In the Geosearch cases, by the contrast, the offerors' continued use of the filing service after a successful drawing was solely at their option. Thus, in Weedon the filing service had a monetary interest in the resulting lease, whereas in the Geosearch cases it did not.

In the instant case, Stevenson would not be precluded, for example, from charging appellant a fee based solely on the number of available acres he was able to find. Possibly he would not even be precluded from charging appellant 25 cents per acre based upon the number of acres she then succeeded in leasing from BLM as a result of his efforts (assuming that the fee was not contingent upon the subsequent sale or development of the lease). But once any part of his fee became contingent upon her sale of the acreage thus obtained, or upon the profits from its sale or development, then his prospective interest in the lease is obvious, and a disclosure must be made.

This distinction did not escape the attention of respondent, whose brief points out:

> Stevenson was not simply paid a day rate plus expenses as is common to the industry, but instead was promised before filing the applications, which he prepared on her behalf, to receive 25 cents per acre for each acre that he filed for her which resulted in a lease to her. Furthermore, she promised him that if she was unable to sell the acreage immediately she would offer an interest to a third party in return for a proportionate share of the expenses, thereby implying that he would have a continuing interest in the applications which went to lease. Thus, his services to her were for much more than technical assistance in preparing applications.

Respondent concludes: "If a source of Stevenson's compensation for his services came from the actual issuance of leases to Trujillo, then his claim for payment for services rendered to Trujillo constitutes a claim to an advantage or benefit from a lease." I might decline to adopt respondent's position in those words, but it is not far off the mark.

To hold that Stevenson did not have a prospective interest in the lease in this case would permit him, as a landman, to acquire virtually unlimited undisclosed interests in oil and gas leases in the course of his professional pursuits (notwithstanding the maximum acreage and other limitations set forth in the regulations), based upon the ingenious theory that since his interest is really a fee for services, it is not really an interest. Such a result would be unfair and unacceptable. In my view, where any future interest in a lease as such is clear, the regulations require it to be disclosed.

Bernard V. Parrette
Chief Administrative Judge